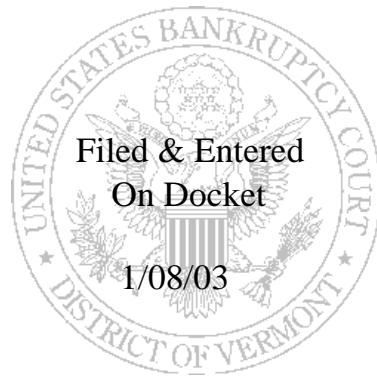


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**H. WILLIAM KOCH, JR. and
DORIS R. KOCH,**
Debtors.

**Case # 02-11162
Chapter 7**

LORNE LAVINE,
Plaintiff,

v.

**H. WILLIAM KOCH, JR. and
DORIS R. KOCH,**
Defendants.

**Adversary Proceeding
02-1069**

ORDER
ON PLAINTIFF'S MOTION TO EXTEND TIME FOR FILING COMPLAINT

WHEREAS, the last day to file a complaint objecting to discharge in this case was December 6, 2002, see generally Fed. R. Bankr. P. Rule 4007; and

WHEREAS, the Clerk's Office received the Complaint commencing the instant adversary proceeding, objecting to the Debtors' to discharge, together with a Motion to Extend Time for Filing Complaint (see doc. #1 and doc. #2) on December 30, 2002;

UPON CONSIDERATION of the Complaint filed herein, Plaintiff's Motion to Extend, Fed. R. Bankr. P. Rule 9006(b), Rule 4004(b), and Rule 7005(e), as well as applicable case law, see, e.g., In re Earth Waste System, No.:98-11675, slip op. at 7 (Bankr. D. Vt. Mar. 29, 2002) (instructing that documents filed via facsimile are not considered filed until processed by the Clerk's Office, not the time they are transmitted), *available at* <http://www.vtb.uscourts.gov/opinions/published/9811675_668.pdf>; see also, e.g., In re Gray, No.:99-10618, slip op. at 3 (Bankr. D. Vt. Dec 5, 2000) (instructing that service by mail does not extend the period for a party to submit a proof of claim and recognizing that denial of late filed proof of claim can be a harsh result), *available at* <http://www.vtb.uscourts.gov/opinions/published/9910618_73.pdf>; cf., In re Bushnell, 273 B.R. 359 (Bankr. D. Vt. 2001) (instructing that application of Bankruptcy Rules in individual cases may lead to harsh results, but strict application is necessary to ensure, *inter alia*, a level playing field),

THE COURT FINDS Plaintiff's Complaint was filed on December 30, 2002. This was the date Plaintiff's Complaint was received and time-stamped by the Clerk's Office. A document is not considered filed with the Clerk's Office until received and time-stamped by the Clerk's Office. See Fed. R. Bankr. P. Rule 7005(e) ("The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk."); cf., Vt. LBR 1002-1(b) "Fax Filings."; cf. also, e.g., Rule 8008(a) ("Papers required or permitted to be filed with the clerk of the district court or the clerk of the bankruptcy appellate panel may be filed by mail addressed to the clerk, but filing is not timely unless the papers are received by the clerk within the time fixed for filing . . ."). Thus, the Court finds the Plaintiff's Complaint to be untimely as a matter of law.

THE COURT FURTHER FINDS, for the reasons stated above, that the Plaintiff's Motion to Extend Time for Filing Complaint was also filed on December 30, 2002. Thus, the Court finds Plaintiff's Motion to Extend is also untimely as a matter of law. Rule 4004(b) directs that such motions "shall be filed before the time has expired" to file a complaint objecting to discharge. Since the Motion to Extend was not filed prior to the expiration of the time for filing the objection, no extension may be granted.

THE COURT FURTHER FINDS it is irrelevant that the Plaintiff sought to file his Complaint objecting to discharge earlier since this earlier attempt to file the Complaint was untimely as well. Although the Complaint was dated December 5, 2002 – one day before the objecting deadline – it was not received by the Clerk's Office until December 9, 2002, as evidenced by the postal return receipt. See Domestic Return Receipt (indicating "Date of Delivery" was December 9, 2002), filed with Motion to Extend (doc. #2). Assuming, *arguendo*, the Complaint received by the Clerk's Office on December 9, 2002 had been accepted for filing,* it still would have been untimely as it would have been filed after the December 6, 2002 objection deadline. As such, it would have had to have been dismissed as untimely under these circumstances as well.

*The Complaint received by the Clerk's Office on December 9, 2002 was not accepted for filing since neither the required filing fee nor the required cover sheet accompanied the Complaint.

THEREFORE, IT IS HEREBY ORDERED that the Plaintiff's Motion to Extend Time for Filing Complaint is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Complaint is dismissed.

SO ORDERED.

January 8, 2003
Rutland, Vermont

A handwritten signature in black ink, appearing to read "Colleen A. Brown", written over a horizontal line.

Colleen A. Brown
United States Bankruptcy Judge